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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/577,084	05/18/2006	Gwénaëlle Bestel-Corre	2912956-027000	2084
84331 7590 04/01/2011 Baker Donelson Bearman, Caldwell & Berkowitz, PC 920 Massachusetts Ave, NW Suite 900 Washington, DC 20001				
EXAMINER VOGEL, NANCY TREPTOW				
ART UNIT		PAPER NUMBER		
1636				
NOTIFICATION DATE		DELIVERY MODE		
04/01/2011		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/577,084

Applicant(s)

BESTEL-CORRE ET AL.

Examiner

NANCY VOGEL

Art Unit

1636

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 February 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 5-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 5-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsman's Patent Drawing Review (PTO-940)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 2/25/11
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/25/11 has been entered.

Claims 1, 5-16 are pending in the case.

Receipt of the Information Disclosure Statement on 2/25/11 is acknowledged.

Any rejection of record in the previous action not addressed in this office action is withdrawn.

The following are new rejections:

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 5-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 5-9 are vague and indefinite since it is not clear whether it is intended that the modifications recited in each of these claims, is intended to be in addition to those recited in claim 1. If this is the case, the addition of a term such as “the strain according to Claim 1, wherein said strain further comprises....”, for example, would be remedial.

Furthermore, claims 15 and 16 are vague and indefinite in the recitation of “a deletion of at least one gene coding for a quinone oxidoreductase and a soluble transhydrogenase” or “a deletion of at least one gene coding for a phosphoglucose isomerase and a phosphofructokinase” since the claims could be interpreted to mean that one gene codes for both quinone oxidoreductase and a soluble transhydrogenase (15) or phosphoglucose isomerase and phosphofructokinase (16). Furthermore, since the claims are dependent on claim 1, which recites that one gene coding for quinone oxidoreductase or a soluble transhydrogenase, and that one gene coding for phosphoglucose isomerase or phosphofructokinase, it appears that the claims fail to further limit the claim on which they depend.

Furthermore, claim 1 and 11 and by dependence claims 5-10, 12-16 are vague and indefinite in the recitation of “at least one gene coding for a quinone oxidoreductase or a soluble transhydrogenase”. It is not clear whether it is intended that deletion of only one gene, or genes, encoding quinone oxidoreductase, or a gene or genes, encoding soluble transhydrogenase, is intended; or whether one of the options encompassed would be a deletion of a gene encoding quinone oxidoreductase and a gene encoding a soluble transhydrogenase. The same problem exists with the claim language regarding

phosphoglucose isomerase and phosphofructokinase. Claim 1 is further vague and indefinite in the recitation of "A strain of a micro-organism ...that is limited by..." since it is not clear what is intended by "limited by". If "comprising" or "having", etc. is intended, this language would be clearer.

Claim 15 is vague and indefinite in the recitation of "A strain according to claim 1, wherein said NADPH-oxidizing activity is limited by" Since it is not clear what is intended by "limited by". If "comprising" or "having", etc. is intended, this language would be clearer.

Claim Objections

Claim 16 is objected to because of the following informalities: claim 16 lacks a period at the end of the claim. Appropriate correction is required.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NANCY VOGEL whose telephone number is (571)272-0780. The examiner can normally be reached on 7:00 - 3:30, Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Arden Marschel can be reached on (571) 272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/NANCY VOGEL/
Primary Examiner, Art Unit 1636

NV
3/27/11